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**Foundation Coal West, Inc. and United Mine Workers of America.** Cases 27–CA–20202 and 27–CA–20295

February 21, 2008

**DECISION AND ORDER**

BY MEMBERS LIEBMAN AND SCHAUMBER

On August 30, 2007, Administrative Law Judge John J. McCarrick issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed a brief in opposition to the Respondent's exceptions, and the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions<sup>1</sup> and to adopt the recommended Order.<sup>2</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Foundation Coal West, Inc., Gillette, Wyoming, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

<sup>1</sup> In adopting the judge's findings that the Respondent violated Sec. 8(a)(1) of the Act, as alleged, we agree that the hallway at issue was a mixed use area in which extensive nonwork activities, such as dining and socializing, occurred and that, consequently, under extant Board precedent, the Respondent was not free to ban distribution of union literature in the hallway absent a showing of interference with production or discipline, which was not demonstrated here. *United Parcel Service*, 327 NLRB 317, 317 (1998) (adopting 325 NLRB 1, 3 (1997)), *enfd.* 228 F.3d 772 (6th Cir. 2000); *Superior Emerald Park Landfill, LLC*, 340 NLRB 449, 456–457 (2003). Accordingly, it is unnecessary for us to rely on other aspects of the judge's discussion.

<sup>2</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Members Liebman and Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

Dated, Washington, D.C. February 21, 2008

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Wilma B. Liebman, Member

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Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

**APPENDIX**

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal Labor law and has ordered us to obey and post this notice to employees in both English and Spanish.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT enforce a rule that prohibits you from distributing union literature in nonwork areas at non-worktimes.

WE WILL NOT issue you written warnings for distributing union literature in nonwork areas on nonworktime to discourage you from engaging in union activities.

WE WILL NOT threaten you with calling the police or in fact calling the police to remove you to prevent you from distributing union literature in nonwork areas on non-worktime.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful written warnings issued to Ronald Faircloth and Jeff Jacobson for distributing union literature and WE WILL, within 3 days thereafter, notify Ronald Faircloth and Jeff Jacobson in writing that this has been done and that these written warnings will not be used against them in any way; and we will not make reference to the permanently re-

moved materials in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker and we will not use the permanently removed material against them.

#### FOUNDATION COAL WEST, INC.

*Michael Cooperman Esq. and Ian Farrell, Esq., for the General Counsel.*

*Anna M. Dailey, Esq. (Dinsmore & Shohl), of Charleston, West Virginia, for the Respondent.*

*Robert Guilfoyle, International Representative for United Mine Workers of America, of Wheat Ridge, Colorado, for the Charging Party.*

### DECISION

#### STATEMENT OF THE CASE

JOHN J. MCCARRICK, Administrative Law Judge. This case was tried in Gillette, Wyoming, on April 18 and 19, 2007, based on the order consolidating cases, amended consolidated complaint, and notice of hearing in Cases 27–CA–20202 and 27–CA–20295 issued on February 7, 2007, by the Regional Director for Region 27.

The amended consolidated complaint alleges that Foundation Coal West, Inc. (Respondent) violated Section 8(a)(1) and (3) of the Act by unlawfully enforcing its no-solicitation/no-distribution rule; by disparately enforcing its no-solicitation/no-distribution rule; by threatening to call and calling police to prohibit its employees from distributing union material; and by issuing written warnings to employees for violating its no-solicitation/no-distribution rule. Respondent filed a timely answer to the amended consolidated complaint denying any wrongdoing.

On the entire record, including the briefs from the General Counsel and Respondent, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

Respondent, a Delaware corporation, with facilities in Gillette, Wyoming, is engaged in the business of operating coal mines throughout the United States, including the Belle Ayr mine in Gillette, Wyoming. In the course of its business operations, Respondent annually purchases and receives at its Wyoming facility goods, materials, and services valued in excess of \$50,000 directly from points located outside the State of Wyoming.

Based on the above, Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II. LABOR ORGANIZATION

Respondent admitted and I find that the United Mine Workers of America (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. Respondent's Belle Ayr Mine

Respondent has owned and operated the Belle Ayr coal mine in Gillette, Wyoming, since about April 2005. Respondent's president is Steven Rennell (Rennell), its human resources manager is Michael Meyer (Meyer), its pit process manager is Dale Saathoff (Saathoff), and its short-term planner and drilling and blasting supervisor is John Crawford (Crawford). Respondent's night-shift pit coordinator is Luther Martinez (Martinez). Respondent has admitted that Rennell, Meyer, Saathoff, Crawford, and Martinez are agents of Respondent within the meaning of the Act.

Respondent's Belle Ayr mine (the Pit) is an open-pit coal mine so vast that when coal is blasted from its benches it is loaded into trucks 15 feet off the ground. When the coal is taken to market entire trains are dedicated to the coal removed from the Pit. At Belle Ayr mine, where coal is blasted, shoveled, and loaded onto gigantic dump trucks, is over a mile distance from Respondent's administrative offices and coal loading mill where trains are loaded with coal. An employee parking lot is adjacent to the main building.<sup>1</sup> Located within the main building are an administrative office, including the executive offices of Respondent's president, human resources, and blasting supervisor, a warehouse, a maintenance area, pit supervisor's office, pit coordinator's office, the yellow training room, men's and women's changing rooms, rest rooms, an ambulance bay, emergency medical technician's (EMT) office, and the Hallway.<sup>2</sup>

The Hallway,<sup>3</sup> the situs of the dispute herein, is the entry point to the Belle Ayr mine for all hourly employees, Pit supervisors, and vendors. The hallway is 81 feet long and about 9 feet wide. At the right end of the Hallway is a double door entrance leading to the employee parking lot and loading doors to the warehouse. At the left end of the hallway is a double door leading to the men's changing room and doors to the women's changing room. Both the men's and women's changing rooms have direct access outside the administrative building from where they are transported to the Pit. Off the hallway behind closed doors are the pit supervisor's office, the pit coordinator's office, the yellow training room, and the changing rooms. At various points along the hallway are the timeclock, located near the double door entrance, a bench where employees congregate to socialize and eat their lunch opposite the coffeemaker and microwave, various bulletin boards,<sup>4</sup> three vending machines, an ice machine, a coffeemaker, and a mi-

<sup>1</sup> Jt. Exhs. 1 and 2.

<sup>2</sup> Jt. Exh. 3.

<sup>3</sup> Employees called the hallway "Junk Food Alley" in reference to the vending machines located in the hallway from which they purchased junk food.

<sup>4</sup> The bulletin boards contain information including mine safety health administration notices, general safety information, production quotas, human resource information and employee personal notes and items for sale.

crowave, desks<sup>5</sup> and cabinets for first aid supplies, forms, medicine, and ear plugs.<sup>6</sup> All production employees have access to the vending, coffee, and ice machines as well as the microwave.

Pit employees who remove coal from the Pit work on two 12-hour shifts. The day shift clocks in between 6:27 and 6:42 a.m. and clocks out between 6:55 a.m. and 7 p.m. The night shift clocks in between 6:27 and 6:42 p.m. and clocks out between 6:55 and 7:10 a.m. In addition to the Pit employees, Respondent employs drillers and blasters and maintenance employees. The drillers and blasters work two 12-hour shifts beginning and ending at 5:05 a.m. or p.m. The maintenance employees work two 12-hour shifts beginning and ending at 6 a.m. or 6 p.m.

There is no dispute that employees use the hallway to socialize with coworkers before, during and after work. At the beginning of each production shift there is a short preshift meeting<sup>7</sup> of about 3 minutes at 6:42 a.m. or p.m. for production employees in the yellow training room where various production issues are discussed, including changes in work assignments. Occasionally the dispatcher will tell an employee of an assignment change in the hallway if they cannot contact the employee in the yellow room. Human resource employees are present during the morning shift change to discuss human resources and safety issues with production employees. The Pit supervisor was also present during the morning shift change as occasionally was Respondent's president. It was admitted that the human resources employees, Respondent's president and blasting supervisor also socialized with production employees and it was not clear how much of the conversation between production employees and Respondent's managers and supervisors was social conversation as opposed to work related issues as no estimates of the number of work related conversations with employees versus social conversation was established. Meyer, Crawford, and Saathoff claimed they were present in the hallway during the morning shift change to assess the demeanor and fitness of employees for work by observing them.<sup>8</sup>

The blasting supervisor, who works from 5 a.m. to 1 p.m., briefly meets with drilling and blasting employees in the hallway at the shift change in the morning to discuss what happened on the night shift. Blasters and drillers likewise speak with each other at shift change in the hallway to discuss what occurred on the previous shift. No blasting takes place at night but drilling is performed. The blasters and drillers speak to Respondent's engineers in the hallway once every 2 weeks about blasting or drilling issues. Again no estimate was made of the proportion of time the drillers, blasters, and blasting supervisor spent having conversations about work-related issues as opposed to socializing nor was an estimate made as to how long

any conversations lasted among these employees during shift change in the hallway. Given the short duration of time production employees were in the hallway between starting and quitting time, the time for work related discussions in the hallway was minimal, according to dispatcher Torres, as little as 15 minutes out of a 12-hour workday.

In about August 2006, the Union began organizing Respondent's production employees at the Belle Ayr mine. On about September 4, 2006, Respondent's employees, Ronald Faircloth (Faircloth), a production technician and dispatcher, and Jeff Jacobson (Jacobson), a welder and shovel mechanic, arrived at Respondent's main building at about 6 a.m., their day off work. Both men entered the hallway from the parking lot and began distributing union literature to employees in the hallway between the timeclock and the entry doors from 6 a.m. until about 7:30 a.m.<sup>9</sup>

The next day Faircloth and Jacobson together with Respondent's production technician, Larry Weber (Weber), on their day off returned to Respondent's main building at about 6 p.m. and entered the hallway through the front-double doors. In the hallway between the timeclock and the entry doors Faircloth and Jacobson again distributed the same union literature to employees entering to go to work but before they were working. At about 6:15 p.m., Pit Coordinator Martinez told Faircloth and Jacobson, "You guys can't do that." Jacobson replied, "We have a legal right to be here and passing out this literature." Martinez said, "I'm going to find out about that." About 10 minutes later, Martinez returned and said, "I'm going to have to call the sheriff." Jacobson replied, "Go ahead. What we are doing, we have the right to do." The sheriff arrived and came to where Faircloth and Jacobson were located outside the entry doors sometime after 6:45 p.m. The sheriff told Faircloth and Jacobson that they had to leave. Jacobson said that they had a right to be there but the sheriff replied that "the person running the shift wants you to leave. You have to leave or be arrested for criminal trespass." Accordingly, Faircloth, Jacobson, and Weber left Respondent's property.

On September 8, 2006, both Faircloth and Jacobson received disciplinary letters for violating Respondent's policy prohibiting distribution of written material.<sup>10</sup>

In the hallway on about November 4, 2006, at approximately 6:10 to 6:25 a.m. Faircloth distributed six copies of the Union's constitution to employees entering on duty but before work began. On November 10, 2006, Faircloth received a disciplinary letter for distributing written material.<sup>11</sup>

At all times material, Respondent has maintained the following rules, cited as "Reasons for discipline" in its technician handbook dated April 20, 2006:<sup>12</sup>

9. Solicitation of another technician while either the person doing the soliciting or the one being solicited is on working time.

<sup>5</sup> On a daily basis, employees drop off shift-related forms at one desk and receive their work assignments for the day from a list at another desk.

<sup>6</sup> Jt. Exh. 4.

<sup>7</sup> Employees are transported to the Pit immediately after the preshift meeting.

<sup>8</sup> Other than being able to detect an individual who was so inebriated as to be stumbling or so paranoid as to be hallucinating, no expertise was established that either Meyer or Saathoff were qualified to detect employees not fit for work merely by observing their demeanor.

<sup>9</sup> GC Exh. 2.

<sup>10</sup> GC Exhs. 3 and 4.

<sup>11</sup> GC. Exh. 6.

<sup>12</sup> Jt. Exh. 6 at 32.

10. Distribution of advertising material, handbills printed or written literature of any kind in the working area.

The record reflects that in the hallway during the last 2 years employees have sold raffle tickets, candy, eggs, hard hat name tags, and cookies and conducted sports pools.<sup>13</sup> However, with the exception of the hard hat name tags, there is no evidence that Respondent's supervisors or managers were present when these solicitations took place nor is there evidence that Respondent's supervisors or managers condoned these solicitations. Moreover, the evidence established that when Respondent became aware of employee solicitations or sales they were promptly halted.

*B. The Alleged Violations of Section 8(a)(1)*

1. The September 5, 2006 enforcement of the no-solicitation/no-distribution rules

Paragraph 6 of the amended consolidated complaint alleges that, on September 5, 2006, Respondent violated Section 8(a)(1) of the Act by enforcing its no-solicitation/no-distribution rules by threatening its employees that it would call the police if they continued distributing union literature on Respondent's property and by calling the police to remove employees from its property who were distributing union literature.

Counsel for the General Counsel contends that the situs where employees were distributing union literature was either not a workplace or was a mixed use area. Respondent posits that the location of the union literature distribution was primarily a work area.

In *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615, 619-620 (1962), the Board explained its rationale in distinguishing the different rules for in-plant employee distribution of written materials and oral solicitation. The Board balanced the employer interests in maintaining order and avoiding hazards in its production areas caused by littering versus employee interests in distributing written materials and found the balance in the employers' favor, noting that by their nature written materials can effectively be disseminated in nonworking areas. On the other hand oral solicitation impinges on an employer's interests only during working time. Thus, the Board held employer rules that nondiscriminatorily prohibit distribution of literature in working areas are valid whereas rules that prohibit oral solicitation during nonworktime are invalid.

In *Transcon Lines*, 235 NLRB 1163 (1978), the Board refused to extend the ban on distribution of written materials in mixed use areas. The work area in question was a drivers' room. Before making a run, drivers came to the terminal, punched the timeclock in the drivers' room, picked up and completed necessary trip documents, read company notices and bulletins, and waited there for the driver who would share the trip with them. On their return, drivers completed travel documents and reports pertaining to their equipment, tire changes, or

accidents. While in the drivers' room, the drivers drank coffee or ate snacks from machines provided there and conversed with other drivers.

Likewise in *United Parcel Service*, 327 NLRB 317 (1998), the Board concluded that an employee check in area that was used by drivers to read, lounge, engage in social conversation, and was used by supervisors to occasionally give some instructions or supplies to drivers during the prestart period was a nonwork area, or at most, a mixed use area and the employer was not privileged to ban distribution in that area.

In *Santa Fe Hotel & Casino*, 331 NLRB 723 (2000), the Board said that the occurrence of nonproduction work on its property does not allow an employer to convert its entire property into a working area. Thus, at a hotel-casino, whose main function was to house guests and allow them to gamble, the employer could not convert the entrances to its hotel-casino into working areas where work functions incidental to its function, including valet parking, gardening, security and maintenance took place. See also *Meijer, Inc.*, 344 NLRB 916, 917 (2005), where the Board found that incidental work of employees retrieving shopping carts and assisting customers to load purchases into cars was not work integral to its food distribution business, thus the customer parking lot was not a working area.

Here, Respondent's main function is the digging, removal, sorting, and distribution of coal. This work is done primarily in the Pit and loading areas of Respondent's Belle Ayr mine, distant from the hallway. It is these production areas of Respondent's facility that the *Stoddard-Quirk* line of cases apply, including the cases cited by Respondent for the proposition that its hallway is a working area. *Uarco Inc.*, 286 NLRB 55 (1987); *Vapor Corp.*, 242 NLRB 776 (1979); and *Timken Co.*, 236 NLRB 757 (1978). It is the main production areas of an employer's facility where the hazards of littering and maintaining order are paramount over employee distribution of literature.

On the other hand, there is no doubt that some work incidental to Respondent's main function takes place in the Hallway. Like the drivers in *Transcon*, in addition to socializing, eating, and drinking with fellow employees, supervisors, and managers, Respondent's production employees in the hallway punch in and out, fill out production related paperwork, and read Respondent's notices and bulletins. Like the drivers in *United Parcel*, Respondent's supervisors occasionally give production employees instructions and employees pick up supplies while waiting to perform Respondent's main function, producing coal. At best, the hallway is a mixed use area where both socializing and nonproduction work, incidental to Respondent's main function, the production of coal, take place. Employee distribution of written materials in the hallway does not infringe on Respondent's interests in conducting an orderly nonhazardous workplace for the mining of coal.

By threatening to enforce and by enforcing its no-solicitation/no-distribution rule in a mixed use area of its facility, Respondent violated Section 8(a)(1) of the Act as alleged in paragraph 6 of the complaint.

<sup>13</sup> Blasting Manager John Crawford observed an employee selling hard hat name tags in the hallway in the summer of 2006. No evidence was adduced establishing how long the name tags were sold nor if Respondent prohibited their sale.

## 2. The disparate enforcement of the no-solicitation/no-distribution rules

Paragraph 7 of the amended consolidated complaint alleges that Respondent violated Section 8(a)(1) and (3) of the Act by disparately enforcing its no-solicitation/no-distribution rules in threatening to call police if employees continued to distribute union literature and calling the police in order to remove employees distributing union literature from its premises.

While the evidence establishes that Respondent's employees engaged in solicitation of other employees for raffles, sales of candy, cookies, and eggs, there is no evidence, other than the isolated example of limited sale of hard hat tags, that Respondent's supervisors or managers condoned these practices. Moreover, the evidence shows that as soon as Respondent's management became aware of employee solicitations in the Hallway they were curtailed immediately. Thus, I find no evidence that Respondent has disparately enforced its no-solicitation/no-distribution rules in violation of Section 8(a)(1) and (3) of the Act as alleged in paragraph 7 of the complaint. I will dismiss this portion of the complaint.

### *C. The Warning Letters to Employees Faircloth and Jacobson as Alleged Violations of Section 8(a)(1) and (3)*

Paragraph 8 of the amended consolidated complaint alleges that Respondent violated Section 8(a)(1) and (3) of the Act by issuing warning letters to employees Faircloth and Jacobson for violating its no-solicitation/no-distribution rules.

There is no dispute that both Faircloth and Jacobson were issued warning letters on September 8, 2006, and Faircloth received a warning letter on November 10, 2006, for violating Respondent's no-distribution policy by distributing union literature to employees coming to work in Respondent's hallway. Having found that Respondent cannot extend its no-distribution policy to the hallway during nonworktime since it is at best a mixed use area, it follows the discipline of Faircloth and Jacobson, who Respondent knew were engaged in union activity, violated Section 8(a)(1) and (3) of the Act as alleged in Paragraph 8 of the complaint. *Alle-Kiski Medical Center*, 339 NLRB 361 (2003).

On the basis of the above findings of fact and the record as a whole, I make the following

### CONCLUSIONS OF LAW

1. Respondent has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by enforcing a rule prohibiting employees from distributing union literature in nonwork areas during nonworktime by threatening its employees that it would call the police if they continued distributing union literature on Respondent's premises, and by calling the police to have its employees distributing union literature removed.

4. Respondent violated Section 8(a)(1) and (3) of the Act by issuing warning letters to employees Ronald Faircloth and Jeff Jacobson for distributing union literature in nonwork areas

during nonworktime to discourage employees from engaging in union activities.

5. The Respondent did not otherwise violate the Act as alleged in the amended consolidated complaint and the remaining complaint allegations will be dismissed.

### REMEDY

Having found that the Respondent violated the Act as set forth above, I shall order that it cease and desist therefrom and post remedial Board notices addressing the violations found.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>14</sup>

### ORDER

The Respondent Foundation Coal West, Inc., Gillette, Wyoming its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Enforcing a rule prohibiting employees from distributing union literature in nonwork areas on nonworktime.

(b) Issuing employees' written discipline for engaging in distribution of union literature in nonwork areas on nonworktime in order to discourage union activities.

(c) Threatening employees that they will call the police or in fact calling police to remove them in order to prevent employees from distributing union literature in nonwork areas on nonworktime.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designated to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, remove from its files any reference to the unlawful written warnings issued to Ronald Faircloth and Jeff Jacobson and, within 3 days thereafter, notify the employees in writing that this has been done and that these written warnings will not be used against them in any way.

(b) Within 14 days after service by the Region, post at its Gillette, Wyoming Belle Ayr mine copies of the attached notice marked "Appendix."<sup>15</sup> Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event Respondent has gone out of business or closed any of

<sup>14</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>15</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 5, 2006.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the amended consolidated complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. August 30, 2007

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal Labor law and has ordered us to obey and post this notice to employees in both English and Spanish.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

Accordingly, we give our employees the following assurances:

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT enforce a rule that prohibits you from distributing union literature in nonwork areas at nonworktimes.

WE WILL NOT issue you written warnings for distributing union literature in nonwork areas on nonworktime to discourage you from engaging in union activities.

WE WILL NOT threaten you with calling the police or in fact calling the police to remove you to prevent you from distributing union literature in nonwork areas on nonworktime.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed to you by Section 7 of the National Labor Relations Act.

WE WILL remove from our files any reference to the unlawful written warnings to Ronald Faircloth and Jeff Jacobson for distributing union literature; and WE WILL not make reference to the permanently removed materials in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker and we will not use the permanently removed material against you.

FOUNDATION COAL WEST, INC.